UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
CHARLOTTE, NORTH CAROLINA

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| STATEMENT OF LAW GOVERNING APPLICATIONS FOR ASYLUM, WITHHOLDING OF REMOVAL, AND PROTECTION OF THE UNITED NATIONS CONVENTION AGAINST TORTURE UNDER INA §§ 208, 241 (Gang-Kinship Claims) | ) | IN WITHHOLDING ONLY AND REMOVAL PROCEEDINGS<br><br>A |

NOW COMES the Court, and adopts and incorporates herein by reference the following statement of law in its oral decision rendered in adjudicating the Form I-589 application submitted in the accompanying record of proceedings.

## I. Evidence

The Court takes administrative notice of the country conditions as described in the most recent U.S. Department of State Human Rights Practices Report for the designated country of removal. 8 C.F.R. § 1208.12(a); *Quitanilla v. Holder*, 758 F.3d 570, 574 n. 6 (4th Cir. 2014); *Ai Hua Chen v. Holder*, 742 F.3d 171, 179 (4th Cir. 2014).

The Court has considered all of the documentary and testimonial evidence submitted by the parties contained in the record of proceedings, and as articulated in the verbatim transcript of the individual hearing on the merits. 8 C.F.R. § 1240.9.

## II. Asylum

### A. Burden of Proof

Any individual who is physically present in the United States, irrespective of status, may receive asylum, in the exercise of discretion, provided she filed a timely application and qualifies as a refugee within the meaning of section 101(a)(42)(A) of the Act. INA § 208. An alien bears the burden of proving eligibility for asylum. *Naizgi v. Gonzales*, 455 F.3d 484, 486 (4th Cir. 2006); INA § 208(b)(1)(B)(i); 8 C.F.R. § 1208.13(a).

An applicant for asylum must show that he or she was subjected to past persecution or that she has a "well-founded" fear of future persecution "on account of race, religion, nationality, membership in a particular social group, or political opinion." 8 C.F.R. §1208.13(b)(1). To satisfy the statutory test for asylum in this case, the respondent must demonstrate that they (1) have a "well-founded fear of persecution;" (2) their fear arises "on account of" membership in a protected social group; and (3) the harm they fear is from an organization that the government in their country of nationality "is unable or unwilling to

control." *Hernandez-Avalos v. Lynch*, 784 F.3d 944, 948–49 (4th Cir. 2015). They must demonstrate the presence of a protected ground, and must link the feared persecution, at least in part, to it. *Saldarriaga v. Gonzales*, 402 F.3d 461, 466 (4th Cir. 2005). The asylum statute was not intended as a panacea for the numerous personal altercations that invariably characterize economic and social relationships. *Id.* at 467 (citation omitted).

If an Immigration Judge determines that an alien has knowingly made a frivolous application for asylum, the alien shall be permanently ineligible for any benefits under section 208(d)(6) of the Immigration and Nationality Act. A condition precedent for this determination requires that, at the time the alien made their application for asylum, he or she received notice "of the consequences . . . of knowingly filing a frivolous application for asylum." INA § 208(d)(4)(A). An asylum application "is frivolous if any of its material elements is deliberately fabricated." 8 C.F.R. § 1208.20. The frivolous warnings provided on the Form I-589 application for asylum are adequate notice at the time it is filed, as nothing in the Act expressly requires that the warning be given by an Immigration Judge. *Ndibu v. Lynch*, 823 F.3d 229 (4th Cir. 2016).

**B. One Year Time Bar**

An alien applying for asylum must show "by clear and convincing evidence that the application has been filed within one year after the date of the alien's arrival in the United States." INA §208(a)(2)(B).

**C. Credibility**

An alien requesting asylum bears the evidentiary burden of proof and persuasion in connection with any application under section 208 of the Act. *See* INA § 208(b)(1)(B)(i); 8 C.F.R. § 1208.13(a); *Mirisawo v. Holder*, 599 F.3d 391, 396 (4th Cir. 2010). For any application for asylum filed after May 11, 2005, certain provisions of the REAL ID Act of 2005 regarding corroboration and credibility are applicable. INA § 208(b)(1)(B)(iii). An applicant's own testimony is sufficient to meet the burden of proving their asylum claim, if it is believable, consistent, and sufficiently detailed to provide a plausible and consistent account of the basis of their fear. 8 C.F.R. § 1208.13(a).

An immigration judge must provide specific, cogent reasons for making an adverse credibility determination. *Djadjou v. Holder*, 662 F.3d 265, 273 (4th Cir. 2011). In evaluating an asylum applicant's testimony, "omissions, inconsistencies, contradictory evidence and inherently improbable testimony are appropriate bases for making an adverse credibility determination." *Id.* Even the existence of only a few such inconsistencies can support an adverse credibility determination. *Id.* Following passage of the REAL ID Act of 2005, an inconsistency can serve as a basis for an adverse credibility determination "without regard to whether [it] goes to the heart of the applicant's claim. *Qing Hua Lin*, 736 F.3d 343, 352-53 (4th Cir. 2013) (citing INA § 208(b)(1)(B)(iii)).

Considering the totality of the circumstances and all relevant factors, the Court may base a credibility determination on any of the following: (1) the applicant's demeanor,

candor, or responsiveness; (2) the inherent plausibility of the applicant's account; (3) the consistency between the applicant's or witness's written and oral statements, the internal inconsistencies of each statement, and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim; (4) consistency of the applicant's statements with other evidence of record, including the reports of the Department of State on country conditions; or (5) any other relevant factor. INA §§ 208(b)(1)(B)(iii); 241(b)(3)(c); *see also Singh v. Holder*, 699 F.3d 321, 328 (4th Cir. 2012).

An Immigration Judge's "credibility findings supported by substantial evidence" are given "broad but not absolute" deference. *Id.* (internal citation omitted). "[O]missions, inconsistent statements, and contradictory evidence are all cogent reasons that support an adverse credibility finding." *Kourouma v. Holder*, 588 F.3d 234, 243 (4th Cir. 2009) (citing *Dankam v. Gonzales*, 495 F.3d 113, 121 (4th Cir. 2007)). Moreover, "those omissions and inconsistencies which go to the heart of an asylum seeker's claim are greater cause for concern than those which are peripheral." *Id.* (citing *Dankam*, 495 F.3d at 122).

Where the Court determines that the applicant should provide evidence corroborating the alien's testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain it. INA § 208(b)(1)(B)(ii); *see Jian Tao Lin v. Holder*, 611 F.3d 228, 237 (4th Cir. 2010) (even for credible testimony, "corroboration may be required when it is reasonable to expect such proof and there is no reasonable explanation for its absence") (internal citation and quotation marks omitted). Lack of corroborative evidence is not necessarily fatal to an asylum application, however, as "[a]n individual can, without corroboration, satisfy this standard simply by presenting credible testimony about specific facts that would cause a similarly situated person to likewise fear persecution." *Jian Tao Lin*, 611 F.3d at 236 (internal citation omitted); see also 8 C.F.R. § 1208.13(a); 8 C.F.R. §1208.16(b)(2)(i).

**D. Corroboration**

The REAL ID Act altered the INA's requirement regarding corroborating evidence. *Singh v. Holder*, 699 F.3d 321, 328 (4th Cir. 2012). Pursuant to the REAL ID Act, "when a trier of fact is not fully satisfied with the credibility of an applicant's testimony standing alone, the trier of fact may require the applicant to provide corroborating evidence 'unless the applicant does not have the evidence and cannot reasonably obtain the evidence.'" *Id.* at 329 (citing 8 U.S.C. § 1158(b)(1)(B)(ii) [INA § 208(b)(1)(B)(ii)] and *Matter of J-Y-C-*, 24 I&N Dec. 260, 262 (BIA 2007) ("The amendments to the [REAL ID] Act continue to allow an alien to establish eligibility for asylum through credible testimony alone, but they also make clear that where a trier of fact requires corroboration, the applicant bears the burden to provide corroborative evidence, or a compelling explanation for its absence.")) In other words, "even for credible testimony, corroboration may be required when it is reasonable to expect such proof and there is no reasonable explanation for its absence." *Lin-Jian v. Gonzales*, 489 F.3d 182, 191-92 (4th Cir. 2007) (internal citation omitted); *see also* INA § 208(b)(1)(B)(ii).

The Court's expectation of some form of corroboration falls within its discretion as the trier of fact pursuant to the REAL ID Act. *See Singh*, 699 F.3d at 332 (citing 8 U.S.C. § 1158(b)(1)(B)(ii) [INA § 208 (b)(1)(B)(ii)]). "A failure to either provide corroborative evidence following a request by a trier of fact or explain its absence further buttresses an adverse credibility determination." *Singh*, 699 F.3d at 330; *Matter of L-A-C-*, 26 I&N Dec. 516, 524-25 (BIA 2015). However, lack of corroborative evidence is not necessarily fatal to an asylum application, as "[a]n individual can, without corroboration, satisfy this standard simply by presenting credible testimony about specific facts that would cause a similarly situated person to likewise fear persecution." *Jian Tao Lin v. Holder*, 611 F.3d 228, 236 (4th Cir. 2010) (citing 8 C.F.R. § 208.13(a)).

Evidence such as letters or statements from family members or friends of an asylum applicant do not substantially corroborate their claim if prepared by a self-interested witness not subject to cross-examination, such that the trustworthiness of the declarant cannot be determined. *Djadjou v. Holder*, 662 F.3d 265, 276-77 (4th Cir. 2011); *Matter of H-L-H & Z-Y-Z-*, 25 I&N Dec. 209, 214 n.5 (BIA 2010), *abrogated on other grounds by Huang v. Holder*, 677 F.3d 130 (2d Cir.2012); *accord Hui Pan v. Holder*, 737 F.3d 921, 931 (4th Cir. 2013).

**E. Statutory Grounds for Relief**

To satisfy the statutory test for asylum, an applicant must make a two-fold showing. They must demonstrate the presence of a protected ground, and link the feared persecution, at least in part, to it. *Saldarriaga v. Gonzales*, 402 F.3d 461, 466 (4th Cir. 2005); *Cordova v. Holder*, 759 F.3d 332, 337 (4th Cir. 2013) (citation omitted). Because both asylum and withholding of removal claims rely on the same factual basis, an Immigration Judge may look to asylum cases when deciding whether a petitioner has asserted a valid particular social group or shown the required nexus in their application for withholding of removal. *Oliva v. Lynch*, 807 F.3d 53, 54 (4th Cir. 2015) (citing *Ai Hua Chen v. Holder*, 742 F.3d 171, 184 (4th Cir.2014) (noting that "the facts that must be proved are the same" for both claims, although the burden of proof is higher for withholding of removal)).

An applicant for asylum must satisfy the nexus requirement by showing past or threatened persecution was "on account of" their membership in that group. INA § 101(a)(42)(A). A petitioner must show that membership in the particular social group "was or will be *a* central reason for [their] persecution." *Id.* at 59 (citing *Matter of W–G–R–*, 26 I&N Dec. 208, 224 (BIA 2014) (emphasis added)). Stated differently, a protected ground must be "'at least one central reason for' the feared persecution" but need not be the only reason. *Id.* (citing *Crespin–Valladares*, 632 F.3d 117, 127 (4th Cir. 2011) (quoting INA § 208(b)(1)(B)(i)). Membership in a protected social group may not, however, be merely "incidental, tangential, superficial, or subordinate to another reason for harm." *Id.* (citing *Quinteros–Mendoza v. Holder*, 556 F.3d 159, 164 (4th Cir.2009) (quoting *In re J–B–N–*, 24 I&N Dec. 208, 214 (BIA 2007)).

A person seeking asylum based upon membership in a particular social group must meet the requirements of particularity, immutability, and social distinction. *Cordova v.*

*Holder*, 759 F.3d 332, 337 (4th Cir. 2013) (citing *Martinez v. Holder*, 740 F.3d 902, 910 (4th Cir. 2014)); *Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014); *Matter of W-G-R-*, 26 I&N Dec. 208 (BIA 2014); *see also Temu v. Holder*, 740 F.3d 887 (4th Cir. 2014). "Any claim regarding the existence of a particular social group in a country must be evaluated in the context of the evidence presented regarding the particular circumstances in the country in question." *Matter of A-R-C-G-*, 26 I&N Dec. 388, 392 (BIA 2014).

The Board's "interpretation of the phrase 'membership in a particular social group' incorporates the common immutable characteristic standard set forth in *Matter of Acosta*." *Matter of M-E-V-G-*, 26 I&N Dec. at 237-38 (citing 19 I&N Dec. 211, 233 (BIA 1985)). The shared characteristic of the particular social group must be one that "the members of the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences." *Matter of Acosta*, 19 I&N Dec. at 233; *Hernandez-Avalos v. Lynch*, 784 F.3d 944, 946 (4th Cir. 2015) (citation omitted); *Martinez v. Holder*, 740 F.3d 902, 910-11 (4th Cir. 2014). The shared or immutable characteristic should also be the characteristic that makes the group (1) generally recognizable in the community and (2) sufficiently particular to define the group's membership. *Matter of A-M-E- & J-G-U-*, 24 I&N Dec. 69, 74 (BIA 2007). The Board, however, does not require a "voluntary associational relationship" among group members. *Matter of C-A-*, 23 I&N 951, 956-57 (BIA 2006).

Apart from immutability, the BIA also requires "social distinction." *Matter of M-E-V-G-*, 26 I&N Dec. at 237 (stating that transition to the term "social distinction" from "social visibility" was for clarification and the Board "would reach the same result in *Matter of S-E-G-* [24 I&N Dec. 579 (BIA 2008)] and *Matter of E-A-G-* [24 I&N Dec. 591 (BIA 2008)] if the term "social distinction" were applied). Social distinction does not require ocular visibility. *Id*. at 234, 236-38; *Matter of W-G-R-*, 24 I&N Dec. at 216. In analyzing the "social distinction" requirement, the Immigration Judge must consider

> whether those with a common immutable characteristic are set apart, or distinct, from other persons within the society in some significant way. In other words, if the common immutable characteristic were known, those with the characteristic in the society in question would be meaningfully distinguished from those who do not have it.

*Matter of M-E-V-G-*, 24 I&N Dec. at 238.

Evidence that perpetrators target an entire population indiscriminately is a highly relevant factor as to whether a group exists, and can be evidence of no social visibility. *Id.* (citing *Matter of C-A-*, 23 I&N Dec. at 960-61). A group cannot be defined solely by the fact of its persecution, and thus requires "a common thread outside of its victimhood." *Id.* (citation omitted).

The Board's requirement of particularity chiefly addresses the "group's boundaries" or "outer limits." *Matter of M-E-V-G-*, 26 I&N Dec. at 241. The proposed group must be

capable of description in a manner sufficiently distinct that the group "would be recognized, in the society in question, as a discrete class of persons." *Matter of W-G-R-*, 24 I&N Dec. at 214 (quoting *Matter of S-E-G-*, 24 I&N Dec. at 584). Courts will decline to recognize a group as a "particular social group" if it is defined too narrowly so as to correspond only to a particular applicant. *Matter of C-A-*, 23 I&N Dec. at 959. Likewise, the particular social group must be not be so broadly defined that delineating from among a "large swath of potential members" would be difficult. The Board has stated the "particular social group must be defined by characteristics that provide a clear benchmark for determining who falls within the group." *Matter of W-G-R-*, 26 I&N Dec. at 214 (citing *Matter of A-M-E- & J-G-U-*, 24 I&N Dec. at 76). The group cannot be "amorphous, overbroad, diffusive, or subjective." *Matter of M-E-V-G-*, 24 I&N Dec. at 239 (citing *Ochoa v. Gonzales*, 406 F.3d 116, 1170-71 (9th Cir. 2005)).

**F. Past Persecution**

"Persecution involves the infliction or threat of death, torture, or injury to one's person or freedom, on account of one of the enumerated grounds in the refugee definition." *Li v. Gonzales*, 405 F.3d 171, 177 (4th Cir. 2005) (internal quotation marks and citation omitted). Although persecution often takes the form of physical violence, "the harm or suffering [amounting to persecution] need not be physical, but may take other forms, so long as the harm is of sufficient severity." *Mirisawo v. Holder*, 599 F.3d at 396 (internal quotation marks and citation omitted). If the alien meets their burden to show past persecution, then a rebuttable presumption they have a well-founded fear of future persecution on account of a statutorily protected ground exists. 8 C.F.R. § 1208.13(b)(1).

Not all harm or punishment rises to the level of persecution. "A key difference between persecution and less-severe mistreatment is that the former is 'systematic' while the latter consists of isolated incidents." *Baharon v. Holder*, 588 F.3d 228, 232 (4th Cir. 2009) (internal quotation marks and citation omitted). "Persecution is an extreme concept that does not include every sort of treatment that our society regards as offensive." *Li v. Gonzales*, 405 F.3d at 177 (internal quotation marks and citation omitted); *see also Mirisawo v. Holder*, 599 F.3d at 399 (Davis, J., concurring) ("[T]he concept of persecution does not encompass all treatment that our society regards as unfair, unjust, or even unlawful or unconstitutional.") (quoting *Fatin v. INS*, 12 F.3d 1233, 1240 (3d Cir. 1993)) (internal quotation marks omitted). A threat of death or injury to one's person or freedom may qualify as persecution. *Crespin-Valladares v. Holder*, 632 F.3d at 126 (citing *Li v. Gonzalez*, 405 F.3d at 177) (internal quotation marks omitted); *accord Hernandez-Avalos v. Lynch*, 784 F.3d 944, 949 (4th Cir. 2015) (citations omitted).

The Fourth Circuit specifically requires that the "deprivation or disadvantage [be] so severe that it threatens the person's very life or liberty," *Mirisawo v. Holder*, 599 F.3d at 396. The focus must not be on the effect of the persecutor's action on the property affected or the impact on other individuals, but the effect on the applicant's own personal life and liberty. *Id.* at 396-97. The harm experienced must be more than "incidental, tangential, superficial, or subordinate" to attempts by others to intimidate a person in some unspecified way.

*Quinteros-Mendoza v. Holder*, 556 F.3d 159, 164 (4th Cir. 2009) (internal quotations omitted).

## G. Well-Founded Fear of Future Persecution

The respondent may establish a well-founded fear of future persecution on account of a statutorily protected ground if he demonstrates "that (1) a reasonable person in the circumstances would fear persecution; and (2) that the fear has some basis in the reality of the circumstances and is validated with specific, concrete facts." *Mirisawo v. Holder*, 599 F.3d 391, 396 (4th Cir. 2010) (internal quotation marks and citation omitted). "In other words, an asylum applicant must demonstrate a subjectively genuine and objectively reasonable fear of future persecution on account of a statutorily protected ground." *Id.* (internal quotation marks and citation omitted). An alien's own speculations and conclusory statements, unsupported by independent corroborative evidence, will not suffice. *Yi Ni v. Holder*, 613 F.3d 415, 429 (4th Cir. 2010) (citing *Jian Xing Huang v. INS*, 421 F.3d 125, 129 (2d Cir. 2005)).

To establish an objectively reasonable fear, the respondent must demonstrate a reasonable possibility that he or she would be singled out individually for persecution or that there is a pattern or practice of persecuting similarly situated individuals. 8 C.F.R. § 1208.13(b)(2)(iii); *Matter of A-M-*, 23 I&N Dec. 737, 741 (BIA 2005) (finding that threat of harm was not "so systematic or pervasive as to amount to a pattern or practice of persecution"). "An applicant does not have a well-founded fear of persecution if the applicant could avoid persecution by relocating to another part of the applicant's country or nationality . . . if under all the circumstances it would be reasonable to expect the applicant to do so." 8 C.F.R. § 1208.13(b)(2)(ii). Incidents that are consistent with acts of criminal violence perpetrated by private actors without involvement by government authorities are not persecution. *Mulyani v. Holder*, 771 F.3d 190, 197-198 (4th Cir. 2014) (citations omitted).

## H. On Account of/Nexus

Even if the alien experienced past persecution or had a well-founded fear of future persecution, they must demonstrate the requisite nexus to establish their claim for relief. INA § 101(a)(42)(A).

The alien must establish that a nexus exists between the harm they fear and a protected ground. *Velazquez v. Sessions*, 866 F.3d 166, 195 (4th Cir. 2017) ("the asylum statute was not intended as a panacea for the numerous personal altercations that invariably characterize economic and social relationships") (quoting *Saldarriaga v. Gonzales*, 402 F.3d at 466). Threats made by outside parties on the basis of an alien's family relationship may meet the nexus requirement for asylum. *Id.* at 196 (citing *Cantillano-Cruz v. Sessions*, 853 F.3d 122 (4th Cir. 2017) and *Hernandez-Avalos v. Lynch*, 784 F.3d 944, 948–49 (4th Cir. 2015)); *see also Salgado-Sosa v. Sessions*, 882 F.3d 451 (4th Cir. 2018); *Zavaleta-Policiano v. Sessions*, 873 F.3d 241, 245-48 (4th Cir. 2017). However, the respondent must still meet his or her burden of proof to demonstrate such nexus exists. *Matter of L-E-A-*, 27 I&N Dec. 40, 43-44 (BIA 2017).

While an alien seeking relief as a refugee need not show conclusively what the motive for their persecution would be, or that the persecutor would be motivated solely by a protected ground, the applicant must produce evidence from which it is reasonable to conclude that the harm would be motivated, at least in part, by an actual or imputed ground. *INS v. Elias-Zacarias*, 502 U.S. at 483; *Matter of S-A-*, 22 I&N Dec. 1328, 1336 (BIA 2000); *Matter of S-V-*, 22 I&N Dec. 1306, 1309 (BIA 2000); *Matter of S-P-*, 21 I&N Dec. 486, 489-90 (BIA 1996).

The alien must establish that the violence they fear is not random, or solely the result of civil strife, but is "on account of" a protected ground. Thus, a protected ground must be at least one central reason for the persecution. *Cordova v. Holder*, 759 F.3d at 337 (citing *Crespin-Valladares v. Holder*, 632 F.3d at 124). A central reason is one that is more than "incidental, tangential, superficial, or subordinate to another reason for harm." *Quinteros-Mendoza v. Holder*, 556 F.3d 159, 164 (4th Cir. 2009) (quoting *Matter of J-B-N-*, 24 I&N Dec. 208, 214 (BIA 2007)). The Board of Immigration Appeals has rejected several particular social group asylum claims based on generalized gang violence. *Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014); *Matter of W-G-R-*, 26 I&N Dec. 208 (BIA 2014); *Matter of S-E-G-*, 24 I&N Dec. 579 (BIA 2008); *Matter of E-A-G-*, 24 I&N Dec. 591 (BIA 2008).

## IV. Withholding of Removal

To establish eligibility for withholding of removal under INA § 241(b)(3), an applicant must show that it is more likely than not that his life or freedom would be threatened in the country of removal because of their race, religion, nationality, membership in a particular social group, or political opinion. *Singh v. Holder*, 699 F.3d 321, 327 (4th Cir. 2012). While withholding of removal has "a more stringent standard than that for asylum," if an alien demonstrates eligibility for withholding of removal, such relief must be granted. *Gandziami-Mickhou v. Gonzales*, 445 F.3d 351, 353-54 (4th Cir. 2006) (internal citations omitted). An applicant who has failed to establish the less stringent well-founded fear standard of proof required for asylum relief is necessarily also unable to establish an entitlement to withholding of removal. 8 C.F.R. §§ 1208.16(b)(2), 1240.8(d); *Ai Hua Chen v. Holder*, 742 F.3d 171, 184 (4th Cir. 2014).

## V. Protection under the United Nations Convention Against Torture

To establish eligibility for protection under the United Nations Convention Against Torture an applicant must establish "first, that it is more likely than not that [s]he will be tortured if removed to the proposed country of removal and, second, that this torture will occur at the hands of government or with the consent or acquiescence of government." *Turkson v. Holder*, 667 F.3d 523, 526 (4th Cir. 2012) (citing 8 C.F.R. § 1208.16(c)(2)). The applicant's testimony, "if credible, may be sufficient to sustain the burden of proof without corroboration." *Id.* (citing 8 C.F.R. § 1208.16(c)(2)). The Court must consider "all evidence relevant to the possibility of future torture." *Id.* (citing 8 C.F.R. § 1208.16(c)(3)). An Immigration Judge's predictive findings of what may or may not occur in the future are

findings of fact, which are subject to a clearly erroneous standard of review. *Id.* at 529; *see also Matter of Z-Z-O-*, 26 I&N Dec. 586, 590 (BIA 2015).

Torture is a "term of art" under the Convention and is legally defined as:

> any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession[,] punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

*Id.* (citing United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *adopted* Dec. 10, 1984, art. 3, 23 I.L.M. 1027, 1027).

A public official acquiesces to torture if prior to the activity constituting torture, the official has awareness of such activity and thereafter breaches his legal responsibility to intervene to prevent such activity. 8 C.F.R. § 1208.18(a)(7); *Mulyani v. Holder*, 771 F.3d at 200 (citing *Lizama v. Holder*, 629 F.3d at 449). It is not necessary for a public official to have actual knowledge of the activity constituting torture. *Suarez-Valenzuela v. Holder*, 714 F.3d 241, 246 (4th Cir. 2013) (reaffirming that willful blindness can satisfy the acquiescence component of 8 C.F.R. § 1208.18(a)(1)). Although evidence of past torture is relevant, it does not create a presumption that an applicant will be tortured in the future. *Id.* at 245 (citation omitted). Instead, immigration judges should consider evidence of past torture, evidence of "gross, flagrant or mass violations of human rights," the country's conditions, and whether the applicant could relocate to a part of the country where he is unlikely to be tortured. 8 C.F.R. § 1208.16(c)(3). An applicant bears the burden of presenting evidence to show that relocation within the country of removal is not possible. *Suarez-Valenzuela*, 714 F.3d at 249; 8 C.F.R. § 1208.16(c)(2)-(3). "Violence committed by individuals over whom the government has no reasonable control does not fall within the purview of the CAT." *Id.* at 246 (differentiating the government's ability to control non-governmental actors from the rejected willful acceptance standard).

Generalized reporting of violent country conditions does not establish the alien's individualized claim under the Convention Against Torture. *Lizama v. Holder*, 629 F.3d 440, 449 (4th Cir. 2011). Evidence that a government has been generally ineffective in preventing or investigating criminal activities does not raise an inference that public officials are likely to acquiesce in torture. *See Garcia-Milian v. Holder*, 755 F.3d 1026, 1034 (9th Cir. 2014). Unsupported assumptions that the alien will be harmed in the future amounts to speculation rather than evidence, and does not meet his burden to establish it is more likely than not he or she will be tortured in the future. *Matter of W-G-R-*, 26 I&N Dec. 208, 225-26 (BIA 2014) (citations omitted). Eligibility for CAT protection cannot be established by stringing

together a series of suppositions to show that torture is more likely than not to occur, unless the evidence shows that each step in the hypothetical chain of events is more likely than not to happen. *Matter of J-F-F-*, 23 I&N Dec. 912, 917-18 (A.G. 2006).

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Date

V. STUART COUCH
United States Immigration Judge
Charlotte, North Carolina